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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 CRIMINAL PRODUCTIONS, INC.,

Case No. 2:16-CV-2704 JCM (PAL)

8 Plaintiff(s),

ORDER

9 v.

10 MARIA JENKINS, et al.,

11 Defendant(s).
12

13 Presently before the court is plaintiff Criminal Productions, Inc.’s motion for an extension
14 of time to file a notice of appeal. (ECF No. 64).

15 Generally, a notice of appeal in a civil case must be filed within 30 days of an entry of
16 judgment or appealable order. Fed. R. App. P. 4(a). Pursuant to Federal Rule of Appellate
17 Procedure 4, a “district court may extend the time to file a notice of appeal if: (i) a party so moves
18 no later than 30 days after the time prescribed by this Rule 4(a) expires; and (ii) . . . the party shows
19 excusable neglect or good cause. Fed. R. App. P. 4(a)(5). The Ninth Circuit has previously held
20 that docketing errors based on a misreading of Federal Rule of Appellate Procedure 4 can
21 constitute excusable neglect in the context of filing a late notice of appeal. *See Pincay v Andrews*,
22 389 F.3d 853, 855, 859-60 (9th Cir. 2004) (en banc) (“The federal rule is a . . . flexible one that
23 permits a narrow 30-day window for requesting an extension, and the trial court has wide discretion
24 as to whether to excuse this lapse.”).

25 Two weeks after this court entered judgment in this case, plaintiff obtained new counsel to
26 represent it on appeal. Plaintiff’s counsel intended to file a motion to vacate based on Federal Rule
27 of Civil Procedure 59(e) and Rule 60(b), which counsel anticipated would toll the deadline for
28 filing a notice of appeal. (ECF No. 64). The deadline for filing a motion based on Rule 59(e) is

1 28 days after judgment. However, due to a delay in obtaining plaintiff's file and a scheduling
2 error, counsel was unable to file the motion until thirty days after the entry of judgment. *Id.*
3 Unfortunately, plaintiff's motion referenced both Rule 59(e) and Rule 60(b), which necessitated
4 submission of a corrected motion the following day based solely on Rule 60(b). *Id.* Therefore,
5 because plaintiff did not file his motion to vacate within thirty days of judgment, the motion did
6 not toll the deadline for filing a notice of appeal. *Id.*

7 The deadline to file a notice of appeal was May 17, 2018. Plaintiff filed a notice of appeal
8 one day late, on May 18, 2018.

9 After reviewing plaintiff's motion and the record in this case, the court holds that plaintiff
10 has demonstrated excusable neglect and the interests of justice favor granting plaintiff's motion.
11 *See Pincay*, 389 F.3d at 859-60. The timing of the notice (a day late) and the prompt filing of this
12 motion demonstrate that counsel has made a diligent effort to correct an excusable mistake that
13 will not prejudice defendants. As plaintiff has already filed its notice of appeal, the court will grant
14 the motion *nunc pro tunc*.

15 Accordingly,

16 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff's motion for
17 extension of time to file a notice of appeal (ECF No. 64) be, and the same hereby is, GRANTED.

18 DATED May 24, 2018.

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UNITED STATES DISTRICT JUDGE